Fictions of Sovereignty: Of Prosthetic Petro-Capitalism, Neoliberal States, and Phantom-Like Citizens in Ecuador

In November 1993, a Philadelphia law firm filed a 1.5 billion dollar class-action suit against Texaco Inc. in a New York federal court on behalf of 30,000 Ecuadorian citizens.[1] The plaintiffs sought reparations for health problems and environmental degradation resulting from over 25 years of Texaco's petroleum activity in the Ecuadorian Amazon. The suit alleged that Texaco Inc. made strategic decisions in its White Plains, NY, headquarters to maximize corporate profits by using substandard technology for oil operations in Ecuador. The plaintiffs claimed that by using negligent industrial practices and deteriorating equipment Texaco dumped toxic wastes into water and soil systems throughout the region, severely contaminating the environment and endangered local people. Texaco Inc. claimed complete exoneration and motioned that the

Abstract

This article explores how rights and accountability are produced and erased under neoliberal regimes. It examines a class-action lawsuit against Texaco Inc. filed in the U.S. on behalf of 30,000 campesinos and indígenas from the Ecuadorian Amazon. The $1.5 billion lawsuit alleged that over 25 years of environmental contamination from Texaco operations exposed local inhabitants to lethal toxins. By probing the connections between what the author terms the prosthetics of corporate capitalism and the phantomness of citizenship, the articles suggests that formal membership in a nation-state is not a sufficient, or necessary, condition for substantive citizenship in Ecuador. By suing Texaco in New York, phantom citizens nurtured the possibility of inhabiting an alternative anatomy as political subjects and held out the possibility of an expanded jurisdiction for righting wrongs.

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case be dismissed from U.S. courts.[2] A subsidiary-of-a-subsidiary-of-a-subsidiary-of-a-subsidiary was liable for operations in Ecuador, the multinational corporation contended, and not the "parent" company.[3] This Texaco subsidiary four-times-removed was legally based in the Ecuadorian capital of Quito, and it was there, the multinational maintained, that Ecuadorian citizens would have to prove wrongdoing and seek restitution.

Resumen

Este artículo investiga la producción y borradura de derechos y responsibilidades bajo un régimen neoliberal. Examina un juicio de clase contra Texaco Inc. presentada en los EE.UU. en el nombre de 30.000 campesinos y indígenas de la Amazonía Ecuatoriana. El juicio de $1.5 billiones alega que las operaciones de Texaco contaminaran el medio ambiente por más de 25 años y exponieran los habitantes local a tóxicos fatales. Investigando las conecciones entre lo que la autora llama la prótesis de capitalismo y la fantasma de ciudadanía , el artículo sugiere que ser miembro formal en un estado-nación no es una condición suficiente, ni necesaria, para obtener la ciudadanía substantiva en el Ecuador. A través del juicio contra Texaco en Neuva York, ciudadanos fantasmos alimentaron la posibilidad de incorporarse a una anatomía alternativa para ser subjectos políticos y insistieron en la posibilidad de una jurisdicción ampliada para rectificar daños.

Mestizo peasant and indigenous Amazonian plaintiffs maintained, to the contrary, that Texaco was Texaco; it was all *"la compañía."* To distinguish Texaco-in-New York from Texaco-in-Ecuador was to succumb to the machinations of corporate law. Subsidiaries were legal concoctions; they protected the parent com-

pany from being overly taxed at home (U.S.) and overly liableabroad (Ecuador). But suing Texaco in Ecuador would mean more than capitulating to a global corporate charade. A lawsuit in Ecuador would be a near legal farce. Ecuador's legal system was notoriously corrupt, the plaintiffs argued. And since the plaintiffs were among the country's most economically, politically, and racially marginalized people, they maintained that the same discriminatory action that had allowed their environment to be contaminated would meet them head on in the courtroom. By suing Texaco in New York, the plaintiffs believed that not only would they transform themselves into a forceful presence (both nationally and internationally) but that they also just might succeed in disrupting the logic of global capitalism that drove oil operations in Ecuador.

This article explores how rights and accountability are produced and erased in a transnational arena. I am interested in understanding how a multinational, circumscribed by codes of behavior at home, came to perfect its corporate performance through a detachable and contingently disavowed subsidiary abroad *and* how individuals denied their privileges of citizenship at home came to claim rights afar. Because the parties involved in this case are persons (both artificial and natural), I examine corporate and subaltern actions by exploring the radically different—though thoroughly interdependent—types of bodies that each inhabits. Asking how and why such bodily forms are inhabitable under late capitalism provides insight into the ways in which power works through embodied processes transnationally. The lawsuit against Texaco demonstrates that the persons involved were hardly discrete, isolated, sovereign entities who happened to come into contact with one another. Rather, their particular form crucially shaped the form and capacities of one another. Filing the class-action suit in New York exposed the interdependencies between these bodies in particularly telling ways.

During the 28 years that Texaco's fourth-tier subsidiary operated in Ecuador, it functioned, I suggest, like a "corporate prosthesis": a legal appendage that propped up the multinational corporation and jacked up its gross assets. One-hundred percent owned by Texaco Inc., the subsidiary extended the multinational corporation's reach, extracting foreign surplus exclusively for domestic accounts. Yet, while crucial for enhancing the multinational's coffers, the subsidiary was—like a prosthesis—tractable, detachable, and ultimately discardable at the behest of central command. Texaco was an artificial body made up of other artificial bodies. Conversely, during the 28 years that Texaco's fourth-tier subsidiary operated in Ecuador, the thousands of peasants and indigenous people living in the area were treated, I suggest, like "phantom citizens": a condition experienced by subaltern groups when their rights of citizenship and national belonging have been disavowed. Many campesino and indigenous plaintiffs believed that Texaco and the state had

dismissed them as expendable and inconsequential beings when it allowed the multinational corporation to construct and operate the petroleum facilities that it did. In written declarations and public speeches set forth within months after the filing of the lawsuit, campesino and indigenous leaders denounced how their "dignity as humans" had been "violated" and their "humanity" had been "erased."[4] Though they appeared to be rights-bearing natural bodies, the plaintiffs were not treated as such.

Soon after the filing of the class-action lawsuit in 1993, I attended one of the first meetings held among lowland mestizo peasant and indigenous leaders to take place in the headquarters of CONFENIAE (Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana), the regional confederation of Amazonian Indians in Ecuador.[5] Members of the lowland indigenous federation with whom I was working asked me, along with a Quito-based environmentalist, to accompany them.[6] The meeting focused on oil operations in the Ecuadorian Amazon and the lawsuit in particular. At one juncture, a mestizo leader asked me (as the supposed expert on the U.S.) why Texaco Inc. thought it was not responsible for its Ecuadorian operations. As I attempted to explain the legal relationship between a parent company and a subsidiary, another leader interrupted stating, "Oh, it [Texaco's subsidiary] is a *miembrillo* that carries out the company's master plan." Laughter immediately filled the room. A double entendre at work. "Miembrillo," while meaning a "small appendage" or "little member" in Spanish, is also slang for "penis" is Ecuador. Without missing a beat, Yvonne (a Quito-based environmental activist, single mother of two, and the only other female in the room) teased: "Yes, but Texaco is more complex than *el hombre*. La compañía has many miembrillos and at least it tries to get rid of the ones that might get it into trouble." The laughter intensified. What remained clear, however, was the idea that Texaco's subsidiary was an intimate, dependent, yet disavowable appendage to the corporate body. It is in this sense that I wish to extend the metaphor of prosthesis to capture a specific relationship between a parent company and its subsidiaries. Like a prosthesis, the subsidiary satisfied the desires of the parent company until it was no longer needed.

Similarly, I wish to employ the metaphor of *phantom* to encompass conditions of invisibility. On my first tour to the area of Texaco's operations in 1990, I crouched on the riverbank as Doña Clara stood in the stream washing her recently plucked chicken. As she related the story of how her son contracted a disfiguring skin disease after she and her family moved to the region in the early 1970's, she noted, "and la compañía? They don't pay attention to us *[No nos hacen caso]*." A light film of crude oil floated on the surface of the water and collected around her legs. Only an hour earlier I had stood next to Leonardo, an indigenous leader with whom I came to work closely over the

following years, and watched crude ooze from the ochre-colored soil as he poked the ground near a recent pipeline leak. "*Es como si no existiéramos*," he mumbled, "*como si fuéramos hechos de vidrio*." For both Doña Clara and Leo, neither the corporation nor the state acknowledged or saw those living in the Amazon region. Like other mestizos and *indígenas* (indigenous people) they explained the injustice of their circumstances with comments like: "*no nos reconocen* [they don't recognize us]" and "*no nos toman en cuenta* [they don't take us into account]." Marginalized Amazonian inhabitants were like phantoms: a form that appears to the sight but has no material substance (Oxford English Dictionary, 4th ed.). They were treated as a phantom citizenry; while they had formal rights as citizens, their substantive rights were dramatically lacking.

Yet it would be a mistake to view the relationship between Texaco's subsidiary and Ecuadorian subalterns through a binary lens—that is, to see the corporate subsidiary as a seamless aggressor and marginalized citizens as hapless victims. As the 1993 lawsuit demonstrates, Texaco's subsidiary and the marginalized Ecuadorian citizens were complexly linked and their relationship was crucially mediated by the Ecuadorian state, another compromised body. On the one hand, though Texaco and the Ecuadorian state claimed to be sovereign bodies, they in fact depended heavily on each other and on subaltern subjects for their functioning. On the other hand, though subaltern citizens were often debilitated by the actions of both Texaco and the state, they were not paralyzed. The dependencies among plaintiffs, Texaco, and the state signaled points of linkage that if challenged could shift the relations of connection and perhaps the operations of power (if only momentarily). Those individuals whose citizenship was phantom-like in Ecuador projected themselves into a foreign judicial system. Strapping on U.S. law as their legal prosthesis, they extended their presence across jurisdictions and challenged the ability of both la compañía and the Ecuadorian government to dismiss their existence.

References to the body infuse the class-action suit against Texaco. To begin, the law itself—both in the U.S. and in Ecuador—relies heavily on the body and bodily action to assert itself. Both North Americans and Ecuadorians live in the legacy of the two bodies of the king—the "body natural" and the "body politic"—where the medieval king literally embodied the law (Foucault 1977, Kantorowicz 1957). Today, the law (understood as a rule of conduct imposed by authority) is "often viewed as an agent uttering or enforcing the rules of which it consists" (OED, 4th ed. s.v. "law"). The law speaks: it dictates, it pronounces. It also has a "long arm," a "heavy hand," and a "conscience"; we speak of standing before the law as if it were another body.[7] Similarly, the term *corporation*—from the Latin *corpore* (to embody)—etymologically rests on the body. In its broad sense, a corporation is a number of persons "regarded as united, in one body; a body of persons" (OED, 4th

ed.). Again, this is an artifact of medieval and early modern Europe where the king embodied the primary corporation; the "Crown was the Corporation" (Maitland 1901).[8] Today, corporations are "artificial persons"; like "natural persons" (you and me) they are given a "special denomination" and are "regarded in law as having a personality" (Black Law Dictionary). Under its unique name, a corporation is said to "*subsist* as a body politic" (BLD 1979:307): ergo "company," from the Latin *cum* (with) and *panis* (bread), those who partake of the same bread. Texaco is then that "body corporate legally authorized to act as a single individual" exclusively for private profit, that is for the benefit of those who eat of the same bread (OED, 4th ed.). Finally, law require that the entity that claims damages and the entity allegedly liable for damages must be bodies.

But what do these bodies look like? In Ecuador, the constitutive connections that made up a subsidiary, the neoliberal state, and marginalized citizens suggest that the conventional conception of bodies (be they capitalist, political, or popular) as being sovereign and complete entities is increasingly problematic for understanding the workings of power under late capitalism. Indeed, post-colonial predicaments and post-structuralist theory increasingly challenge the notion that the body is an independent, cohesive, and organic whole (Cooper and Stoler 1997; McClintock, Mufti, and Shohat 1997; Williams and Chrisman 1994). We need then to find metaphors that account for and embrace the inorganic, non-cohesive, dependent, and incomplete social composites that make up our reality today. But this entails a project to reconceptualize (not discard) the body. For, the body is a powerful metaphor that is not going away.[9]

My use of *prosthesis* and *phantom* as metaphors builds on a growing area of inquiry that attempts to rethink the use of the body. From Mary Douglas (1966) to Michel Foucault (1977, 1980, 1988, 1990) scholars have long taught that bodies are not self-evident. They have to be constructed and contained. And the ways that bodies are constructed and contained often reflect particular orders and disorders in society (Martin 1987, 1997; Scheper-Hughes 1992). Whether scholars invoke "prostheses" (Gray and Mentor 1995; Grosz 1994; Brahm and Driscoll 1995; Nelson 1999; Stone 1995), "phantom," (Gordon 1997; Grosz 1994), "cyborg" (Davis-Floyd and Dumit 1998; Gray 1995; Haraway 1991) or other body metaphors (Case 1997; Russo 1997), they all speak to how conventional understandings of the body—that most material and intimate phenomenon that we have come to rely on for capturing larger-than-life phenomenon such as groups, companies, nations, states, or transnational organizations—are no longer effective (if they ever were) for understanding social processes. Thus, in this paper I use the metaphors of *prosthesis* and *phantom* to underscore the incomplete, contingent, and interconnected nature

of various kinds of bodies. By showing the connections among (and thus the compromised existence of) corporate, state, and subaltern bodies, the lawsuit against Texaco challenged the notion that bodies are sovereign entities.

Let me clarify from the onset that my use of *prosthesis* as a metaphor exceeds common usage. By "prosthetic," I am referring to the capacity to incorporate various instruments for perfecting bodily function. While prostheses often refer to mechanical devices that replace missing body parts (as with an artificial leg), prostheses can likewise embrace supplementing and augmenting technologies (as with eyeglasses or hearing aids).[10] *Prosthetic*, following the OED, comes from the Greek, meaning "of the nature of addition, giving additional power." Thus, if we imagine prostheses to be power-enhancing extenders, then they are far from being lifeless forms, and are far from being attached only to wounded bodies (Nelson 1999). Prosthetic technologies are animated processes that form arenas of articulation: zones of extension, retraction, subversion, and appropriation that always resulted in altered re-articulations (cf. Hall 1986a, 1986b, 1990). By better understanding the prosthetics of transnational capital and the phantom-ness of citizenship that together haunt the majority of the world's population, we might be better able to map out the possibilities for making and living in morphologically recombinant bodies politic.

Of Toxic Terror

The history of Texaco's operations in Ecuador sets the stage for understanding the relationship between the multinational corporation and local people. It began in 1967 when Texaco—via its fourth-tier subsidiary TexPet (Texaco Petroleum Company)—discovered oil in Ecuador. As Ecuador's first major commercial petroleum reserve, the discovery launched the nation into the industrial world. Amazonia—historically classified by the Ecuadorian state as a barren wasteland ("*tierras baldías*" and "*tierras salvajes*") in need of civilization—soon became the source of Ecuador's black gold. By 1972, the trans-Andean pipeline was completed, connecting Amazonian oil fields with a Pacific port. By 1973, Ecuador joined OPEC as its second-smallest producer. Today, all major hydrocarbon reserves are located in the Ecuadorian Amazon (or the Oriente, as the region is called).

The flow of crude set the pulse of national modernization; Texaco set the protocol for industrial operations. With the influx of new petro-dollars and aspirations for development, Ecuador imposed few restraints on Texaco in the Oriente and the corporation imposed few on itself. Consequently, 28 years of Texaco's crude exploitation indelibly transformed the northern rain forest, scoring it with thousands of miles of seismic grids, over 300 oil wells, more than 600 open waste pits, numerous pumping stations, an oil refinery,

and the bare-bones infrastructure essential for petroleum operations. A network of roads linked oil towns and facilitated the homesteading of the region by over 200,000 poor mestizo farmers or *colonos* (colonists) (CESR 1994; Trujillo 1987; Uquillas 1985, 1989, 1993; Vickers 1984; Zevallos 1989). Many Oriente indígenas increasingly joined the economic ranks of the non-indigenous, semi-urbanized and rural peasants as their lands diminished. It is 30,000 of these colonos and indígenas who make up the "class" of the class-action lawsuit against Texaco.

Erroneously, the Ecuadorian and especially the international press commonly label the plaintiffs in the lawsuit against Texaco as "Amazonian Indians." Images of Indians dressed in "traditional" garb routinely accompany newspaper stories and TV news on the event.[11] Undoubtedly, the idea that Amazonian Indians are suing the world's fifth-largest oil conglomerate makes for good news, garnering much-desired international attention and support for the case. But it also creates a skewed picture. The majority that makes up the "class" are non-indigenous colonos. Many of these colonos came to the rain forest region in the late 1960s and early 1970s when the state encouraged peasants from the coast and the sierra to homestead so-called "unclaimed lands." These colonists settled alongside the roads and infrastructure that Texaco built in what are now the Napo, Sucumbios, and Orellana provinces in the northern Ecuadorian Amazon. Without doubt, Texaco's operations have had tragic and devastating effects on indigenous peoples as a result of dispossession, disease, and cultural deprivation; the Cofán and Siona-Secoya Indians, who today number approximately 500 and 700 individuals respectively, have been the most intensely affected (ACOINCO-CEDIME 1991; Hvalkof 2000). But the majority of people who live near Texaco's more than 300 highly contaminating oil wells are Spanish-speaking colonos.

Throughout its 28 years of operations (1964–1992), Texaco took negligible environmental precautions. Since Ecuador's industrial standards were lax, if existent, working in Ecuador released Texaco—via TexPet—from the regulatory constraints it confronted in the U.S. and allowed the corporation to engage in practices that, while illegal at home, boosted corporate revenues by the billions. Between 1972 and 1991, Texaco produced over 1.4 billion barrels of crude in Ecuador (Petroecuador 1992:14). Based on the annual price per barrel, Texaco's production earned over $23 billion. Granted, investment costs need to be deducted to ascertain the company's net profit. But significantly, Texaco's subsidiary in Ecuador greatly enhanced overall profits by cutting the cost of production. The plaintiffs' chief lawyer, Cristóbal Bonifaz, estimated that TexPet saved the parent corporation between $4 and $6 billion by reducing its per-barrel production costs by $3 to $4 (personal communication 1995). These cost cutting practices pervaded all aspects of

TexPet's petroleum "development" in the northern Oriente: seismic exploration, exploratory drilling, extractive drilling, processing facilities, pipeline maintenance, and pumping stations. At each juncture in Texaco's oil operations, the subsidiary employed minimal equipment, outmoded technology, and cheap labor.

While such practices were sufficiently effective to get and keep oil flowing, they were environmentally and socially lethal. As an Ecuadorian geophysicist formerly employed by Texaco noted, "We've come to learn the harsh way, through Texaco's mess." The company's seismic lines and detonations essential for determining subsoil strata formations ripped thousands of miles of swaths and detonated thousands of pounds of dynamite across inhabited landscapes, irrespective of the presence of homesteads, crops, or livestock (Rosania 1994 personal communication). Environmental standards at Texaco's drilling and processing facilities were deplorable. Alongside each exploratory well lay huge toxic earth-pits. TexPet regularly dumped the chemical muds and industrial solvents essential for drilling, and the sludge and formation waters that surfaced from oil reservoirs along with crude, untreated into these pits (Rosania 1994 personal communication; Kimerling 1991). When an oil well was proven to be productive, the adjacent pits were relocated to processing facilities where crude was separated out from the waters, sands, and gases also released from the earth. Unlined and open pits served merely as holding receptacles for eventual toxic seepage and overflow. Even during the early years of Texaco's operations in the Oriente, it was standard industrial practice in the U.S. to re-inject highly toxic formation waters and subterranean sands at least one mile below the surface of the earth, to process chemical solvents until they were environmentally safe, and to refine subterranean gases. In Ecuador, TexPet poured oil wastes into pits and periodically burned off their thick crude residue; the burning-off of crude led to the phenomenon of "black rain"—the "bleeding of the skies" with hydrocarbon soot. Similarly, volatile gases flamed freely into the atmosphere 24 hours a day. Researchers estimate that Texaco's operations generated up to 4.3 million gallons of hazardous waste daily over a period of 20 years (CESR 1994; Kimerling 1991).

Between 1972 and 1990 the Texaco-operated trans-Andean pipeline spilled an estimated 16.8 million gallons of crude into Amazonian headwaters—over one and a half times the amount spilled by the Exxon Valdez (Kimerling 1991, 1993, 1996). Estimates for secondary pipelines easily compete with that figure. Oil spills are an inherent risk to the petroleum business, and Texaco claimed that "natural" factors—especially the 1987 earthquake—were responsible for the major portion of crude that was spilled. Yet "economic" factors determined *how* the company chose to mitigate oil slicks or deal with them should they occur. TexPet invested minimal resources in maintaining a deteriorating pipeline and "clean-up" of petroleum spills often took the form

of covering them up. With Amazonian rainfall reaching three to five meters a year, buried oil spills and inundated pits contaminated water and soil systems throughout the northern Oriente. Engaging in negligent practices meant that Texaco, via its corporate subsidiary, chose not to invest in the more sophisticated equipment and the more complex technologies that would have assured a modicum of social and environmental protection. This choice flew in the face of standard petroleum practice set in place in the U.S. since the early 1970s. Texaco's industrial practices within Ecuador, together with a cheap labor force, allowed TexPet to secure substantial profits for its corporate home. It is in this sense that TexPet functioned as a prosthesis; along with dozens of other Texaco subsidiaries across the globe, TexPet both propped up and extended the parent company, or *matriz* (womb) as it is called in Ecuador. The matriz, the body that brought forth subsidiaries, was crucially dependent on them and the specific social, economic, and legal conditions that enabled them to work.

Thus, while placards on Texaco service stations in the U.S. cautioned North Americans against inhaling gasoline fumes while pumping gas, thousands of colonos and indígenas in Ecuador bathed, washed clothes, fished, and cleaned food in Amazonian rivers whose waters and sediments reeked of crude toxins (Garzón 1995; Kimerling 1991; Switkes 1995). Wastes from oil operations contain known carcinogens that bio-accumulate. Crude oil's most toxic components (polycyclic aromatic hydrocarbons [PAHs] and volatile organic compounds [VOCs]) have been shown to negatively effect the reproductive and cellular development of all life forms and to lead to skin disease, reproductive abnormalities, nerve damage, and various forms of cancer among humans (Eckardt 1983; Green and Trett 1989; IARC 1989; Reis 1992). Beyond the hazardous elements found in crude, drilling and production processes likewise generate toxic pollutants containing carcinogenic heavy metals, strong acids, and concentrated salts. Such pollutants are largely found in drilling muds (used to lubricate, cool, and control pressure during perforation) and industrial solvents.

A growing number of studies document the detrimental and deadly effects of over a quarter century of crude seepage on Amazonian populations. In 1992, CORDAVI (Corporación de Investigaciones Jurídicas y de Defensa de la Vida, a Quito-based human rights group) conducted studies showing that water in rivers near oil camps had a concentration of hydrocarbons 2,000 times that considered tolerable for aquatic ecosystems (Real López 1993:54). In their 1993 investigation, Acción Ecológica (a Quito-based environmental activist organization) reported that local inhabitants complained of an increased incidence of skin and intestinal disease and tumors, headaches, fevers, and miscarriages (AE 1993). The Center for Economic and

Social Rights recorded contaminants in drinking water that reached levels 1,000 times the safety standards recommended by the U.S. EPA (CESR 1994). A pilot study by the Department of Tropical Medicine at the University of London reported that cancer rates in one colono community exceeded standard cancer rates by up to 30 times (Sebastián and Córdoba 1999). Physical disorders, the plaintiffs argued, are a direct result of environmental contamination. They contended that Texaco executives in New York were ultimately accountable for decisions that condemned Oriente residents to living in toxic dumps. And they demanded "equitable relief": that Texaco Inc. assume responsibility for the bodily, social, and ecological damages that TexPet wreaked.[12] Texaco would need to ensure health care for those affected, compensate for the personal injuries and losses endured as a result of contamination, clean up the environment it devastated, and modernize drilling and extraction technologies.

The November 1993 class action against Texaco followed years of sustained activism against the multinational corporation's activities in Ecuador and strategizing against the corporate body at its New York home. Beginning in the late 1980s, environmental, human rights, colonist and indigenous groups increasingly documented and publicized the ills of Texaco operations. In 1989, these organizations launched a campaign against Texaco called *La Campaña por la Vida* (The Campaign for Life). Initially, the key Ecuadorian actors protagonizing the crusade were Acción Ecológica (Ecuador's most radical environmental NGO) and CONAIE (Confederación de Nacionalidades Indígenas del Ecuador, the pan-national indigenous organization) and CONFENIAE (Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana, the regional Amazonian indigenous organization) since they already existed as organizations.[13] As protest and research activities intensified over the following year, Acción Ecológica quickly expanded its networks and worked with the thousands of colonos who lived in the northern Oriente. Ultimately, colonist and indigenous communities formed the Frente de Defensa de la Amazonía (Amazonian Defense Front); this coalition became the principal entity that represented the Ecuadorian plaintiffs and coordinated activities with U.S.-based lawyers.

Between 1990 and 1999, I conducted over two years of research on the politics of petroleum in the Ecuadorian Amazon. When the lawsuit against Texaco was initially filed in November 1993, I was ensconced in the longest stint of my dissertation fieldwork approximately 100 miles south of Texaco operations. Over the previous 20 years, Texaco had been Ecuador's principal oil producer; beginning in 1990, a rash of new multinational corporations promised to be imminent producers. I was researching the effects of this intensified petroleum activity in the region. La Campaña sought to stimulate

public reflection on the cornerstone of Ecuador's so-called national "development"—the intensive exploitation of hydrocarbons. Consequently, I came to work closely with many Ecuadorian peasant and indigenous leaders and environmental activists who were involved in La Campaña and who protested multinational oil operations. My involvement (if only tangential) with the Texaco case stemmed from the fact that a number of these individuals became the major Ecuadorian catalysts of the class-action lawsuit—though not all of them were part of the "class" per se.

At the colono—indígena meeting held in CONFENIAE, Luis Yanza (a key leader for the Frente) calmly held the microphone as he explained the lawsuit against Texaco. "Petroleum means a slow death for *el pueblo*," Yanza began. "Texaco has sucked out our riches and has left us bleeding." As he spoke, he stood in front of a large banner with La Campaña's signature slogan written across it: "*Fluye el petroleo, sangra la selva* [As petroleum flows so the jungle bleeds]." As these words intimate, members of La Campaña believed that oil operations proceeded in Ecuador to the detriment of Amazonian bodies, both social and ecological. A flier passed around earlier and reading "TEXACO TOXICO" in bold red letters underscored this sentiment. In the space between the words sat the grim reaper dripping with oil on a barrel of crude. Rather than depicting Texaco as the cornerstone to national "development" and "modernization," the flier portrayed Texaco as the death-stalker that cut up, sucked off, and slowly killed its host nation.

It was difficult not to see Doña Luz's anguish that afternoon in July 1994 when she showed me the toxic waste pit near the community of San Carlos into which one of her chickens and later her goat had fallen. The animals were attracted to the flooded pits because of their high salt content. When asked how Texaco had responded to her and her community's earlier attempts to get the company to clean up and fence off the contaminated area, she replied, "*Somos fantasmas* [we're ghosts]." The fact that her hands were wrapped in bandages much like those of a mummy only reinforced her words, making Doña Luz literally appear other-worldly. The chemicals forming the pit's brew had burnt Doña Luz's hands when she reached to rescue her oil-drenched fowl; the reaction only intensified when she washed off the residue of crude oil with gasoline.[14] Doña Luz's comment that she and her community were *fantasmas*—beings with form but not substance—echoed those of many living near Texaco's oil facilities; both colonos and indígenas repeatedly referred to themselves as "the absent voices," the "ignored" (Garzón 1995), the "unrecognized," the "disregarded," and the "silenced" (Garzón 1995; Villamil 1995). Quoting a colona, an article in the *New York Times* ended with similar sentiments of being phantom-like; "They [Texaco and the Ecuadorian government] don't want anything to do with us. Nobody sees us here."[15]

Yet, the protest chant—"as petroleum flows so the jungle bleeds"—condemned more than simply the multinational corporation. It similarly indicted the Ecuadorian state and its fervor to intensify oil operations. Through public outcry, La Campaña sought not only to pressure Texaco into abating its reign of toxic terror, but also to politicize the nation around the social, cultural, and economic dangers of the state's neoliberal agenda of intensified dependency on oil extraction. That is, the colonist-indigenous-environmentalist coalition sought to highlight the fact that Ecuador's petroleum politics would not only exacerbate the problems facing subaltern citizens but also that the success of the state's hydrocarbon agenda depended on its ability to intensify their pain.

Between 1988 and 1993, numerous actions were taken to put pressure on Texaco. Retracing the very corporate tiers that Texaco Inc. thought would keep it safe, communities wrote letters to the multinational in New York denouncing spills, toxic seepage, and the destruction of forest and farm property. Concomitantly, these communities staged nonviolent protests and occupations in Ecuador. Appropriating a global discourse of environmentalism and human rights as its moral prosthesis, the colono–indígena–green alliance infused itself with an ethical mandate and legitimacy. Phantom citizens too used prostheses, yet toward different ends than did the multinational. These moral extenders fleshed out their empty status and transformed disavowed bodies into disruptive political subjects. In September 1992, La Campaña's alliance declared a boycott against Texaco. Within months, a network of green groups across Europe and the U.S. expanded the ban to the international arena. Among their many international tactics, the colono–indígena–green alliance, together with international organizations, encouraged members to send rolls of toilet paper to Texaco in New York with the message: "Clean up your mess!"[16] Was the corporate body incontinent abroad? Was it incapable of controlling its waste and the seepage of its industrial discharge? In 1993, the Campaña grew dramatically both nationally and internationally. In June of that year, CEDEMA (Comité Ecuatoriano para la Defensa de la Naturaleza y el Medio Ambiente) was formed among 30 environmental organizations in Ecuador. In November (the month when the class action was filed), the Amazon Coalition emerged as a network among 40 U.S.- and Latin American-based environmental organizations. The headquarters of the Amazon Coalition and select member organizations have been crucial in galvanizing international support for the lawsuit.

Throughout 1993 and 1994, one graffiti insignia in particular dominated Quito walls. Suspended in a drifting balloon—as if out of reach, untouchable—were the words:

Terrorismo
Ecológico
X
A
C
O

The epigram spoke harrowing truths. In addition to the toxic terror of crude exploitation, political threats debilitated colonist and Indian actions. Popular protest against oil operations was often repressed with military might. Foreign multinationals and the Ecuadorian army have long had an intimate relationship (Colby with Bennet 1995; Galarza 1980). According to the Ecuadorian constitution, all subterranean resources—of which oil is the most coveted—belong to the state (Art. 46). As defined by the National Security Law (Art. 50) and the Hydrocarbon Law (Arts. 6 and 8), petroleum is a national-security resource of strategic importance and its production must be guaranteed by military action. When Amazonian residents challenged the workings of Texaco's subsidiary, the military predictably came to the defense of the multinational corporation. While intimidation was the most frequently deployed tactic to dislodge popular opposition to oil operations, select military attacks, clandestine tortures, and unaccounted-for deaths instilled sufficient trepidation to quell radical unrest around Texaco operations.[17]

In November 1992, the military attacked demonstrators who demanded potable water and toxic cleanup in Lago Agrio (Acrid Lake), the provincial capital near Texaco operations; various women were arrested and two individuals were assaulted with bayonets (CEDHU 1993). In February 1993, the army opened fire on hundreds of colonos and indígenas who peacefully protested in Coca, the largest northern Oriente oil town. Organized by the town council, demonstrators demanded clean drinking water, better medical treatment, and the control of petroleum contamination. One councilman was killed and two other protesters were seriously injured (CEDHU 1993). In late January 1994, at a road block protesting drastic increases in gasoline prices, army trucks deliberately plowed into demonstrators and seriously injured many women and children. In June 1994, seven men disappeared from the Coca area after the military dislodged protesters who had shut down drilling operations at a former Texaco well. All were submitted to inhumane interrogation; one never returned.

As the Comisión Ecuménica de Derechos Humanos (CEDHU, Ecuador's oldest and most respected human rights organization) noted, "the Amazon holds enormous riches, yet it is one of the places where the interests of capital ravage [*arrasan*] people's very existence—all in the name of state mod-

ernization and economic growth" (CEDHU 1993:57). Despite being the region that provided Ecuador with its greatest wealth (oil revenues accounted for approximately 50 percent of the state budget), the northern Oriente is plagued by poverty and contamination. To ensure the flow of crude oil for a dependent state, the Ecuadorian military repressed those who protested the toxic seepage that flooded their lives. Suppressing citizens' rights to protest and to accountability created the perfect environment for maximizing corporate profits. Texaco could use cheap, substandard, and outdated technologies in the Oriente and be confident that the corporation would not be held responsible for the social and ecological repercussions that such technologies guaranteed. Amazonian inhabitants were valuable to the operations of corporate capital and a dependent state only to the extent that their citizenship remained phantom-like.

Of Accountability and Space

Attempts to hold multinational corporations legally accountable in the U.S. for their actions in foreign lands have been notoriously unsuccessful. The deaths of thousands from a 1984 gas leak at Union Carbide's Bhopal, India, plant is perhaps one of the more tragic failures (Cassels 1993; Das 1995; Laughlin 1995). Filed in the same New York district court, the Bhopal case was summarily dismissed on grounds of unsuitable jurisdiction; the court ruled (erroneously according to many) that the Indian court was an adequate alternative forum for action.[18] U.S. courts widely conclude that tort (or wrongdoing) alleged to occur in foreign lands, under foreign laws, toward foreign subjects is best arbitrated in foreign territory, regardless of who is alleged to have perpetrated what action.[19]

The litigation pursued by Ecuadorian subalterns in New York sought to obviate conventional U.S. court rulings. As in the Bhopal case, Amazonian peoples retraced a corporation's subsidiary back to its domestic abode. Yet, unlike the Bhopal case, the plaintiffs did more than claim that a parent company must be held responsible for its subsidiaries' actions. Ecuadorian plaintiffs charged that Texaco Inc. itself committed illegal acts. Tort, they claimed, occurred on U.S. soil in Texaco's New York headquarters among the multinational's executives and board members. Corporate decisions in the North to employ substandard technologies and practices in the South had direct repercussions on how Texaco's subsidiary carried out its oil operations in Ecuador. Claimants argued that TexPet's practices of dumping toxic crude, industrial solvents, and formation waters into the environment—and thereby exposing lowland residents to the long-term carcinogens—resulted from decisions made in the United States.[20] By claiming that industrial contamination issued from investment strategies codified in Texaco's New York executive

chambers and that it was Texaco Inc. that broke the law, the plaintiffs sought to derail the corporation's argument that it was not responsible for TexPet.

What I would like to suggest is that multinationals have legally exonerated themselves from culpability in foreign affairs through a prosthetics of subsidiaries. In the petroleum industry, subsidiaries are eminently malleable for strategic penetration and accumulation, for crafting new labor relations, and for employing different technologies as the company moves from oil exploration to oil production. Most importantly, however, subsidiaries are detachable and as such constitute the legal loopholes whereby the "parent" company (or matriz) maintains its immunity from exploits abroad. As Texaco Inc.'s counsel firmly asserted: "Texaco Inc. is not liable for the activities of its subsidiary (Texaco Petroleum Company)."[21] Following U.S. legal convention, parent corporations are not responsible for the liabilities of their subsidiary corporations. TexPet was a separate company; it made no difference in corporate law that the U.S. corporation owned its subsidiary 100 percent.

Such flexible regimes of accumulation are, of course, not new in the petroleum industry. Pliable configurations of subsidiaries are precisely what has enabled the oil industry to exercise the power it has since its inception in the late 1800s. In the U.S., the Standard Oil Trust (which later became the Standard Oil Company of New Jersey and which today trades as the Exxon Mobil Corporation) came to represent the corporate model. At the time of its consolidated in 1882, Standard Oil was made up of 30 vertically integrated subsidiary companies; by the late 1890s that number had risen to 70, but not for long. In 1911 the Supreme Court found that the Standard Oil Company was guilty of violating the Sherman Antitrust Act and "decreed the dismemberment"(Owen 1975:287) of the monopoly. The court action "detached" 33 separate corporations—including what would eventually become ARCO, Mobil, and Chevron—from Standard Oil, cutting the company's assets by 57 percent (Owen 1975:288).

The break-up of Standard Oil was meant to split up the biggest and most powerful oil conglomerate in the world, to create new companies from those dismembered subsidiaries (*miembrillos*), and to provide smaller independent competitors in the industry (such as the Texas Company, Texaco's predecessor, founded in 1897) with a more equitable playing field. While the dismemberment of Standard Oil did allow a handful of oil companies to gain prominence in the industry, paradoxically it converged with global politics to make a hierarchically embedded subsidiary structure *the* corporate model for the petroleum business and extended this structure internationally. Prior to World War I, European and Russian oil interests dominated international petroleum operations and Standard Oil's forays internationally were quite minimal. When World War I and the Bolshevik Revolution crippled the European

and Russian industries, however, Standard Oil swiftly extended itself into the international arena (Owen 1975), allowing the still-massive company to maintain its strength and predominance. After the Supreme Court's decision, Standard Oil restructured itself into 30 legally independent subsidiary corporations that dramatically expanded their activities across the globe.[22] The only oil corporations among the newly created and the smaller independent companies in the early 1900s that were able to compete with Standard Oil were those that mimicked this pattern of vertically integrated international subsidiaries. Ironically, the 1911 Supreme Court antitrust ruling pronounced in the name of protecting economic rights in the U.S.—together with a recognition of oil's strategic role in World War I, a heightened U.S. desire to secure control over oil reserves overseas, and an impressive increase in the domestic demand for fossil fuels in the 1910's—gave rise to a slew of artificial and mutable bodies-corporate that all operate through legally untouchable subsidiaries abroad.

As Wigley notes, a prosthesis is an element "that reconstructs that which cannot stand up on its own, at once propping up and extending its host" (quoted in Gonzalez 1995:135). And indeed throughout this century, oil subsidiaries have been crucial structures that "establish the place"—the corporate center—that they "appear to be attached to" (Wigley quoted in Gonzalez 1995:135). Just as Standard Oil reconsolidated its power in 1912 by intensifying the very structure that the Antitrust ruling sought to undermine, so today no major oil company could exist without its army of prosthetic subsidiaries. More than offsetting deficiencies, corporate subsidiaries are both structural pillars and power-enhancing extenders. In the interest of accumulating greater capital, they are strategically in-corporated and detached so as to boost corporate assets, please stockholders, and lure further investments. A holding corporation could never exist without them.

Sitting on a bench outside the Frente's offices in early May 1994, Don Vincente squinted his crystal-green eyes against the morning sun. "It's as if," he said, taking a long drag on his cigarette, "Texaco was a big mosquito and each well was its stinger just sucking and sucking." The smoke from his cigarette kept the mosquitos away. Don Vincente (a campesino leader) and I had traveled together to Lago Agrio to prepare for an upcoming tour to bring indígenas and colonos from the southern province of Pastaza to the northern Oriente in order to see the effects of Texaco's operations. We had just come from seeing an oil well and were waiting for community leaders to attend a meeting with us. The soles of our boots were caked by the layer of crude that Texaco had poured on local roads as faux-asphalt. "And what have they left?" Don Vincente continued between drags. "Big scars [*cicatrices por todo*]. Misery. How can they think that they are not responsible for what's happened

here? La compañía is la compañía." Within an hour, Don Vincente repeated the words I had heard a key indigenous leader say at the joint colono–indígena meeting at CONFENIAE. In an effort to show his commitment toward building solidarity among colonos, Don Vincente rallied: "we need to combine forces, *compañeros*. No one can live alone, *compañeros*. Not even in the United States. Texaco there lives off Texaco here and both live at our expense." Phantom-like citizens—those with formal but scant substantive rights—in Ecuador sought to expose these links.

Gray maintains that "prosthetic processes" such as "[e]nhancement and replacement are never fully integrated into a new synthesis . . . remain[ing instead] lumpy and semi-autonomous" (1995:224). While this is true for the oil industry, it should also be qualified. Granted, the "lumpy" subsidiary tiers did not make Texaco into a seamless whole. It was precisely the connections between the subsidiary bodies and the parent corporation that allowed marginalized Ecuadorians to trace the flow of power; the joints served as rungs for traversing the hierarchy of sub-corporations. Yet, Texaco's subsidiaries were hardly "semi-autonomous." Once unhooked from their life support, once detached from the womb, they expire and disappear. Thus, TexPet was not a supplementary appendage that could exist on its own, nor was it "foreign" (of different stock) as the parent company maintained. Rather TexPet was intimately linked—generated by and terminated by Texaco Inc. The distance that the parent company claimed from its subsidiary was feigned; it was merely a legal caveat, and Ecuadorian plaintiffs sought to prove precisely that.

Texaco withdrew its operations from Ecuador in 1992, the point at which its 28-year contract to explore and exploit oil terminated.[23] The lingering Texaco subsidiary, TexPet, was a shell company that existed largely in name. The Ecuadorian-based company employed no personnel, although it retained a handful of lawyers for legal snafus and held $10 million in assets to settle disputes. What once upon a time had existed as Texaco in Ecuador no longer did. Those executives who once operated Texaco facilities no longer resided in Ecuador and the subsidiary's holdings were hardly sufficient to pay for the company's sins. Despite Texaco Inc.'s argument that the plaintiffs should appeal for recompense in Ecuador, suing TexPet clearly made no sense. Even a high-ranking Texaco executive asserted that TexPet was not a viable corporation in that it had no employees.[24]

The class action exposed a corporate fiction. Texaco Inc. and TexPet were intimately linked. According to plaintiffs, suing TexPet (even if it were a viable company) would mean condoning a system where fiscal interdependence between a subsidiary body and its parent body did not necessitate shared corporate responsibility. While marginalized Ecuadorians were not in a position to transform the structure of a multinational corporation, they

were able to deflect Texaco Inc.'s claims for exoneration by distinguishing the locus of wrong doing from the locus of its effects. Texaco Inc. in New York—not TexPet—was the tortious corporate body liable for environmental and health damages in Ecuador. By inserting themselves into the U.S. legal system, subaltern plaintiffs embodied an enhanced political anatomy that made it difficult for the la compañía and the state to treat them as though they were phantoms, as though they carried no weight. Constructing a wronged identity abroad served likewise to animate the plaintiffs' political subjectivity at home.

Of Corporate Attachments and Dismembered Citizens

As one might expect, the class-action suit against Texaco in New York received notable press in Ecuador. In late 1993 and early 1994, all major newspapers ran front-page stories covering the case, and numerous editorials condemned or condoned its legitimacy.[25] Public debate escalated when the Ecuadorian ambassador to the United States, Edgar Terán Terán, wrote a letter to the U.S. State Department demanding that it intervene in the judicial process and have the Texaco case expelled from U.S. courts.[26] In his letter, the ambassador claimed that the decision of a U.S. court to accept jurisdiction for a lawsuit concerning activity within Ecuadorian territory would constitute a flagrant "affront" to Ecuador's "national sovereignty." The ambassador questioned the alleged citizenship (that is, national allegiance) of the plaintiffs and—in the same breath—warned the U.S. State Department that acceptance of the case would negatively affect the Ecuadorian economy.[27] Hearing the case in New York would create "serious disincentives to U.S. companies" intent on investing in Ecuador "precisely at a moment" when the country was "attempt[ing] to attract [foreign] investors." Were "the U.S. Courts [to] accept jurisdiction" of the Texaco case, Terán Terán concluded, the "benefits" and "guarantees" that Ecuador so strategically conceded—including IMF-encouraged neoliberal changes and the U.S. encouraged war on drugs—would be "significantly eroded."

In January 1994, the Republic of Ecuador submitted an amicus brief to the New York District Court. The document further indexed where allegiances stood; likewise, it further underscored the incompleteness of the nation-state's supposedly sovereign body. "Ecuador needs," the brief began—in laying out the "facts"—"foreign investment in order to stimulate its economy. For this purpose, the government has implemented an array of market-based reforms."[28] The most significant reform sought "to privatize 70 per cent of state-owned industries, including part of the oil sector . . . the nation's principal export[er]." "Ecuador's privatization program, however," the text continued, would "not succeed without an infusion of foreign capital." A U.S. court's "assertion of jurisdiction" over the class action could irreparably "disrupt" the country's IMF-encouraged economic agenda. Transnational corporations,

the brief argued, "carefully consider Ecuadorian laws and regulations prior to investing." And, "foreign investors *naturally* assume that disputes relating to the development of Ecuador's natural resources are to be adjudicated by the courts of Ecuador" (emphasis added). Already this lawsuit had "cast a cloud over [these] reasonable expectations." Suggesting that Ecuador's purported economic needs might outweigh the need for high industrial and health standards, the ambassador observed in his affidavit: "[d]ecisions concerning liability for [the] production . . . or misuse of petroleum resources in Ecuador must be made in light of the economic, political and social conditions of Ecuador."[29]

Frente leaders were both insulted and disgusted that the executive branch so zealously opposed the class action in the name of national sovereignty precisely at a moment when it embraced economic globalization.[30] The irony—which would be laughable if it were not so tragic—was lost on few: executive declarations so favorable to a foreign (U.S.) defendant and hostile to native (Ecuadorian) plaintiffs were paradoxically justified in the name of patriotism and the defense of sovereignty. For many, "neoliberal sovereignty" rang oxymoronic; as one indigenous leader once told me, "*No tiene sentido* [It doesn't make sense]". Passionate appeals to sovereignty during a time of legal restructuring conditioned by the World Bank and the IMF that granted special privileges to multinational petroleum interests seemed specious, even hypocritical. As a result of numerous workshops by Acción Ecológica and the Frente, it was common knowledge that U.S. environmental restrictions were more stringent than the inept laws regulating industrial activity in Ecuador. Thus, as Yvonne (the environmental activist and mother of two) clarified in the meeting at CONFENIAE, making a U.S. corporation answerable for ecological damage beyond its home border, would not infringe on Ecuador's ability to make sovereign decisions. Rather, she (as well as others) insisted, "sovereignty would be diminished should there be impunity": that is, should safety standards established for industrialized nations be deemed irrelevant for the South.

By cloaking its neoliberal polemic with nationalist sentiments, the executive poorly camouflaged the state's concern over the social instability that its policies had fomented. In early 1994 (precisely at the moment when Ecuador's diplomatic statements emerged), the country convulsed with ministry sit-ins, oil-well occupations, street demonstrations, and city riots staged by popular alliances in response to drastic changes in the hydrocarbon law (Sawyer 1997a). Similarly, the diplomatic declarations unintentionally revealed the enfeebled nature of the state's own body politic. The state was woefully dependent on specific transnational and national political economic relations: it leaned on multinational petro-capital and it leaned on disavowed national subjects. To lure foreign investment, Ecuador's executive not only needed to sell its resources to the highest bidder, it likewise needed to populate what it called its

island of "peace and order" with docile (and cheap) labor. For it was the bodies and lives of subaltern subjects—those that the state sought to make complacent and submissive through phantoming their citizenship—that largely enabled transnational capital to widen its profit margin.

In his letter to the state department, the Ecuadorian ambassador refuted the plaintiffs' arguments that they could "never expect an impartial trial in Ecuadorian courts." Such claims were "false and defamatory," Terán Terán charged, and it "would be highly offensive" for U.S. courts to countenance them.[31] Numerous high-ranking officials in Ecuador, however, publicly contradicted the ambassador. Ironically, an Ecuadorian lawyer retained by Texaco Inc. acknowledged in a public lecture less than a month before the class-action filing that Ecuador's judicial system "could not be more atrocious"; "corruption had reached absolutely unimaginable levels; judicial norms and principles lack[ed] effectiveness."[32] This assertion merely confirmed statements made by the then-Minister of the Tribunal of Constitutional Guarantees: while "[a]ccording to the Constitution there is an independent judicial function . . . in reality it is weak [and] vulnerable to political and economic pressure."[33] Such weakness and vulnerability were key factors in making citizenship phantom-like for Ecuador's subaltern subjects.

The Ecuadorian Constitution guaranteed citizens the right to live in a healthy environment (Art. 19:2); similarly, it guaranteed access to judicial means to redress environmental wrongs. Theoretically, then, lowlanders could sue parties for wrongful damage. In practice, however, many obstacles— both legal and social— impeded the injured parties from taking such action. Legally, the plaintiffs could not join together (thus no class actions); they could not independently compel the defendants to provide internal documents (thus no discovery process); they needed to rely on court-appointed expert witnesses (thus it was difficult to build a case); and the majority of the "hearing" occurred through written materials (thus no oral cross-examinations of witnesses). Furthermore, the National Congress appointed all judges, making them susceptible to political pressure, especially when it came to the production of a national security resource such as petroleum (CESR 1994:22).[34] Finally, if re-filed in Ecuador, the lawsuit would be heard in Lago Agrio.[35] In 1994, the Lago Agrio courthouse (a 12-hour somewhat treacherous drive from Quito) consisted of one room (the judge's chambers and courtroom) with one desk, one filing cabinet, and a manual typewriter.

In addition to judicial obstacles, discrimination, intimidation, and misinformation created formidable barriers to plaintiffs' legal action in Ecuador. In some cases, local authorities misinformed peasant and indigenous groups, claiming that they could "not make demands against Texaco's pollution [*sic*] in court."[36] At other times, intimidation served as a deterrent against pressing

claims. An indigenous leader noted that many communities refrained from protest because of military threats; his community ended its protest against seismic exploration for oil when the army warned that it would "bomb" them.[37] One of the colonists who was seriously wounded when the military opened fire on Oriente demonstrators in 1993 noted that "because of the military repression, it is impossible to bring a lawsuit against Texaco . . . here in Ecuador without putting your life at risk." Underscoring the phantom nature of their citizenship—the fact that subaltern Amazonians had formal but not substantive standing as citizens—the same colono noted that colonists and indigenous peoples have little confidence "in the ability of the courts to protect [their] legal rights" against those with political and economic power.[38] His comments resonated with those of one minister: "The profound racism against indigenous peoples, extensive poverty, [and] high levels of inequality" that marked Ecuador "transcend any constitutional declaration regarding human rights. . . . There is constant discrimination and unequal application of the law."[39]

As many scholars suggest, one effect of globalization is that "formal membership in the nation-state is increasingly neither a necessary nor a sufficient condition for substantive citizenship" (Holston and Appadurai 1996:190; see also Hall and Held 1990; Mouffe 1992). Such was the case in Ecuador. As the state's reaction to the class-action suit in New York illustrated, the Ecuadorian government via its diplomatic corps championed the interests of a multinational corporation under the pretext of national sovereignty while simultaneously eschewing responsibility for the physical, social, and economic health, and even the belonging, of its own citizens. The ambassador, remember, questioned the loyalty of the plaintiffs—suggesting that *real* citizens would never file such a suit—and called their claims "false and defamatory." The Ecuadorian government granted more comprehensive protection and more lenient prerogatives to a multinational corporation than to those who by right of birth deserved its protection. Subalterns' formal citizenship offered them negligible substantive rights.

Shunning citizens and embracing transnational capital exposed the hypocrisy of a core notion undergirding Ecuadorian so-called "liberal democracy"; "equality of citizens" was a fiction. "While the constitution declares the equality of all Ecuadorians before the law," a former minister attested, "it is public knowledge that the poor, indigenous peoples, and marginalized sectors in general have no real possibilities of obtaining just treatment from persons socially influential and economically powerful."[40] Though constitutionally endowed with rights as full members of the Ecuadorian society, 30,000 subaltern Amazonian people pulled little weight in informing the actions of the state. Instead, the executive branch sanctified oil operations and championed advances toward neoliberal reform: for castigating multinational capi-

tal, especially in U.S. courts, would undermine neoliberal agendas. The executive branch needed Texaco and other oil companies like crutches supporting its bloated foreign debt, state budget, and elite penchants. Similarly, it needed docile, subservient bodies whose labor and lives—in being exploitable—created the optimal conditions for prosthetic capital to increase its gross profits.

The articulations among subaltern groups, the state, and a multinational conglomerate underscored the cruel paradox engulfing the marginalized in third-world places. Subsidiaries could best maximize profits in zones ripe for exploitation: places populated by phantom citizens. Texaco thus depended on the existence of a classist and racist exclusionary state in order to build up its annual revenues as much as Ecuador depended on foreign capital for paying its debt and building the illusion of modernization. And both depended on the existence of subaltern people whose citizenship was phantom-like. In filing the class-action in New York, subaltern Amazonians thus indicted the ways in which they were used to prop up corporate and elite penchants and they denounced the crisis of accountability inherent in neoliberal economic agendas. By inserting themselves as plaintiffs in U.S. courts, Amazonian residents bridged the chasm between their formal and substantive citizenship and challenged the plausible deniability of corporate responsibility. In so doing, phantom citizens nurtured their possibilities for inhabiting an alternative anatomy as political subjects. The suit gnawed away at the gross impunity through which multinational corporation operated abroad, and it fleshed out the spectral citizenship which subaltern groups suffered at home.

Of Border-Crossing Bodies

In April 1994, the New York district court allowed that the class-action enter "discovery"—that Texaco's files be opened to the plaintiffs' lawyers for further scrutiny.[41] Without accepting jurisdiction, Judge Vincent Broderick ruled that further evidence needed to be presented to the court before it could decide whether or not to accept the case. In his legal memorandum, Judge Broderick indicated that the U.S. court could well be an appropriate forum for hearing the Texaco suit under the Alien Tort Act.[42] Originally enacted in 1789, the Alien Tort Act provides that district courts have jurisdiction over suits filed by aliens that claim violation of "the laws of nations" or "a treaty of the United States" by persons domiciled in the U.S.[43]

"The law of nations," Judge Broderick argued in his memorandum, is "customary in nature, to be defined by the usages, solemn commitments and clearly articulated principles of the international community." If U.S. courts are asked to enforce "such usages, commitments and principles" it is essential that the U.S. participate in their formulation. "Non-treaty international law," he continued, "may be treated as [quoting Chief Justice Harlan Stone (1936)]

the 'sober second thought of the community' upon which all law ultimately rests." With regard to the class action against Texaco, Broderick explained that "the most pertinent" non-treaty international law to be considered was "the Rio Declaration on Environment and Development" signed by both the U.S. and Ecuador in 1992. The document's second principle recognizes that states have "the sovereign right to exploit their own resources pursuant to their own environmental and development policies." But, the judge added, it also declares that states have "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.'" That the U.S. adheres to international commitments in controlling toxic wastes within *its* borders, tends to support," Judge Broderick asserted, "the appropriateness of permitting suit under 28 USC 1350 [the Alien Tort Act] if there were established misuse of hazardous waste of sufficient magnitude to amount to a violation of international law."[44] Thus, the class action could potentially be heard in New York if Texaco Inc.—a private artificial body—were found negligent along environmental lines established by an international declaration.

In December 1994, the same Philadelphia legal team filed another class-action against Texaco, Inc. in the same New York federal court, this time on behalf of 25,000 Peruvians. The plaintiffs lived along the Napo River—the principal river near Texaco operations—where it flows into the Peruvian Amazon; they claimed similar personal injury, property damage, and environmental contamination as a result of toxic petro-residues that floated downstream. In January 1995, Judge Broderick ordered that the Ecuadorian and Peruvian cases be consolidated. The judge's decision greatly strengthened the plaintiffs' suit. While Texaco could claim that Ecuadorian plaintiffs should have their case heard in Ecuador, the same could not be argued for Peruvian plaintiffs. According to the claimants' chief counsel Bonifaz, Peruvian plaintiffs could not "sue Texaco in Peruvian courts, as Texaco never operated in Peru and as the Peruvian courts have no . . . jurisdiction over the U.S. corporation."[45] Peasant and indigenous Peruvian claimants had even fewer venues for demanding accountability fromTexaco. Increasingly, the New York court appeared to be the most appropriate site for hearing the now tri-national complaint.

In early 1996 Judge Broderick tragically died of cancer. The case was reassigned to Judge Jed Rakoff. In November 1996—three years after the initial filing—this new judge dismissed the Texaco case from the federal court precisely at the moment when Texaco Inc. faced an onslaught of racial discrimination charges in the U.S.[46] One of the reasons for dismissal was that the Ecuadorian state had opposed the hearing of the case in U.S. courts. Immense public protests erupted in Ecuador in reaction to Rakoff's decision,

the most significant being a mass demonstration through Quito streets and the nonviolent occupation of the office of the Ecuadorian Attorney General. Organized by the peasant–indigenous–green coalition forming the Frente, both events received substantial press. Within days the attorney general flew to the U.S. to attest that his government was now in favor of trying the suit against Texaco in the United States. While the Ecuadorian government's new position toward the case in part reflected a new presidential leadership, the change in the official stance was more directly the result of strong public protest, of marginalized Amazonian citizens refusing their phantom-like status.[47] Given the Ecuadorian government's changed position, the plaintiffs requested that Judge Rakoff reassess the court's jurisdiction to hear the case. In July that year, the judge upheld his previous stance. Immediately, the plaintiffs appealed to the superior court.

In October 1998, a three-judge panel of the U.S. Court of Appeals for the Second Circuit in Manhattan unanimously reversed the lower court's decision.[48] The superior court ordered Judge Rakoff to reconsider his reasons for dismissing the lawsuit. In its judgment, the Court of Appeals cited the potential application of the Alien Tort Act. Thus, drawing on an act written over two hundred years ago, these judges upheld Judge Broderick's daring suggestion: a private, prosthetically sustained corporate body (Texaco Inc.) could be held in violation of an international law (the Rio Declaration) for its actions overseas. Demonstrating that Texaco likely violated the Rio Declaration and that such actions originated in part in the United States might be sufficient cause for Ecuador's disenfranchized citizens to have their claims heard in U.S. courts. Ironically, the same international declaration that the Ecuadorian ambassador and Texaco lawyers cited in attempting to establish the sovereign right of Ecuador to use its natural resources as it pleased, could well oblige Texaco Inc. to submit to a U.S. court.[49] More intriguingly, the rulings of Judge Broderick and the Court of Appeals demonstrated how the U.S. legal system could function as an enabling device for third-world phantom-like citizens to exact accountability of and retribution from a multinational corporation for its operations abroad.

By way of conclusion, I suggest that the linkages among a multinational corporation, the Ecuadorian state, subaltern groups, and legal discourse are crucial for understanding the Texaco case and the movements of power under late capitalism. As the class action against Texaco Inc. shows, fictions of sovereignty—be they individual, national, corporate, or legal—masked the interconnections and interdependencies through which differently positioned, yet always contingent, bodies were linked. Remarkably, the flows of power that animated these connections and dependencies were multi-directional, if always unequal. For willful bodies—be they artificial (Texaco Inc.),

compromised (the Ecuadorian state), or spectral (phantomed citizens)—did not simply seize a passive instrument in attempting to extend themselves. Prosthetic conjoining changed these bodies and those whom they touched. Texaco Inc., the Ecuadorian Executive, and subaltern plaintiffs were all linked. Those very links enabled exploitation and marginalization, but also appropriation and subversion. While denying people their human dignity and disavowing their rights was key to maximizing both multinational and national accumulation, it was also the condition for galvanizing an impressive response that could well set legal precedent.

The class-action lawsuit against Texaco in the U.S. represents a formidable challenge to the politics of accountability under a neoliberal orthodoxy. Subaltern plaintiffs contested the ability of a multinational corporation to be inculpable for the crude exploits of its subsidiaries. They denounced a world in which a multinational company—via corporate subsidiaries—depended on exploitable subaltern subjects and spaces for maximizing its gross earnings and could exonerate itself of any responsibility for the effects of a subsidiary's actions. Exposing multinational capitalism's dependence on the bodies and lives of third-world disenfranchized citizens prompted the questioning of corporate, multilateral, and national neoliberal strategies to optimize capital accumulation. The Texaco case demonstrated how neoliberal policies, while enriching many a transnational and national elite, hollowed out marginalized citizens' rights to the point where subaltern people's existence bore little weight. By indicting transnational capital abroad, subaltern citizens also exposed the phantom-ness of their own citizenship at home. For plaintiffs, substantive rights bore scant relation to their formal codification in the Ecuadorian constitution. By embodying a new political anatomy enhanced through U.S. law, border-crossing subaltern subjects challenged both multinational and national exclusionary practices.

"Rights," Shapiro notes, "are predicated on juridical standing . . . [for] a fixed address . . . is a prerequisite for exercising rights in the world of bordered entities" (1994:496).[50] Yet, as the class action against Texaco signals, "juridical standing" may be more flexible, more recombinant, and less contained than often perceived. Indeed, the class action hints at how rights-bearing bodies and politico-juridical recourse might be transforming in our globalizing world. By suing Texaco in New York, marginalized Ecuadorian subjects are sustaining the possibility of an expanded jurisdiction for righting wrongs. A "fixed address" (residing or being corporeally present) in the U.S. may not be what is essential for acquiring juridical standing. The lawsuit against Texaco does suggest, however, that a "fixed address" is, importantly, a prerequisite for targeting the alleged liable and accountable body. As Luis Yanza (a key Frente de Defensa leader) recently told me over the phone from his office in Lago Agrio, "la Amazonía is not dying, its being killed. And those who did

the killing have names and addresses" (personal communication 2000). If ruled to be the tortious body, Texaco Inc. must be tried in New York, because it resides there; it make no difference where it operates. Thus, the class action's compelling arguments separating the site of wrongdoing from the site of its effects disrupted the legal conventions that defined jurisdiction and sovereignty. Such disruption held out the promise of new imaginings of political subjectivities, substantive rights, and corporate liability that traveled back-and-forth across legal and state borders.

On February 1, 1999, Judge Rakoff heard the plaintiffs' and the defendant's arguments once more in order to reassess his prior ruling. As of this writing, the case is still pending. Regardless of future events, the class-action pursued by marginalized peoples against Texaco prompts reflection on the intimate articulations among contingent and always incomplete bodies under late capitalism. It encourages thought over how the linkages and dependencies among differently mutable in-corporations produce, sustain, and might interrupt the workings of power. It encourages pause over how "crude" relations might be realigned, despite being patterned through inequalities. The class-action by third-world subaltern peoples against the world's fifth-largest oil conglomerate provokes a rethinking of citizenship, state sovereignty, and multinational capital in a world conditioned by both national and transnational attachments.

Notes

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1. Case presented to the United States District Court for the Southern District of New York: *Aguinda v Texaco Inc.*, 93 CIV 7527 (VLB). Attorney Cristóbal Bonifaz (based in Amherst, Massachusetts) and co-counsel Kohn, Nast, & Graf (based in Philadelphia, Pennsylvania) presented the case.

2. Texaco hired former Attorney General Griffin B. Bell as counsel to defend its concerns. For action to dismiss the case see: "Memorandum of Law in Support of Defendant Texaco Inc.'s Motion to Dismiss Based Upon Principles of International Comity"; "Memorandum of Law in Support of Defendant Texaco Inc.'s Motion to Dismiss Based on Forum Non Conveniens"; "Memorandum of Law in Support of Defendant Texaco Inc.'s Motion to Dismiss Individual Claims"; "Memorandum of Law in Support of

Defendant Texaco Inc.'s Motion to for Failure to Join Indispensable Parties" (Law offices of King & Spaldings, Texaco's acting counsel).

3. In the affidavit of Texaco Petroleum Company, Denis York LeCorgne, Vice President of Exploration and Production in Latin America and West Africa, stated: "TexPet is a wholly-owned subsidiary of Texaco International Financial Corp., which, in turn, is a wholly-owned subsidiary of Texaco Overseas Holdings Inc., which, in turn, is a wholly-owned subsidiary of TRMI Holdings Inc., which is a wholly-owned subsidiary of the defendant Texaco Inc." Coral Gables, FL, December 13, 1993.

In his affidavit, George S. Branch (partner with Griffin B. Bell in the law firm King & Spaldings) stated as Texaco's acting counsel that the case against Texaco Inc. should be dismissed "on the grounds that Texaco Inc. neither conducted nor directed the activities at issue in this case. TexPet, not Texaco Inc., is the entity that actually operated in Ecuador until mid-1990." Furthermore, he argued "that Texaco Inc. did not conduct the alleged activities, that Texaco Inc. is not liable for the activities of its subsidiary (Texaco Petroleum Company), and that Texaco Inc. should therefore be dismissed." New York, December 27, 1993.

The text of this and all subsequent affidavits were obtained from the internal files of the law offices of Kohn, Nast, & Graf. I obtained copies of all the affidavits I cite through the Frente and Acción Ecológica. The law offices representing the plaintiffs and the defendant hold a complete set of the thousands of pages of affidavits generated for this case.

4. Declaration of the Frente de Defensa de la Amazonía (January 14, 1994), press release of the Amazonía por la Vida alliance (January 24, 1994), letter to Minister of Energy and Mines from the San Carlos community (February 24, 1994).

5. It should be noted that historically the relations between lowland colonos and indígenas have been quite antagonistic. Importantly, the lawsuit against Texaco served as a forum in which these groups shared a common concern. Along with other events in 1993–1994, the class-action suit provided the space to significantly transform colono/indígena relations and for developing new forms of interaction. I explore this process in greater detail elsewhere (Sawyer forthcoming).

6. Over the past decade I have collaborated with OPIP (Organización de Pueblos Indígenas de Pastaza), a lowland Indian organization, at various junctures. Between June 1993 to December 1994, I worked intensely on a daily basis with the OPIP leadership and community members on growing concerns over petroleum operations in the areas.

7. The law is the Corpus Juris Secudum (the encyclopedic statement of legal principles) in the U.S. today, just as it was the Corpus Juris Civilis (the

legislation codified under emperor Justinian I that greatly influenced the legal systems of continental Europe and much of contemporary Latin America) for the Roman Empire in mid-500 A.D.

8. In law a "person" falls into two categories, that of a natural person (a human being) and that of an artificial person (a corporation) both having rights and duties recognized by law. As Speed in 1611 noted in his History of Great Britain (v. iv. 23) "If there be any, bee hee priuate person, or be it corporation" (OED 4th ed, s.v. "person"). Blackstone noted in 1765 "natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government; which we call corporations or bodies politic" (OED Comm I. i. 123). In 1833 Act 374 William IV, c. 74, I, "The word 'Person' shall extend to a Body Politic, Corporate, or Collegiate, as well as Individual."

By the Elizabethan era, corporations emerged as business enterprises. This was a period when businessmen were beginning to accumulate substantial surpluses, and overseas exploration and trade presented expanded investment opportunities. Incorporated firms were semipublic enterprises acting both as arms of the state and as vehicles for private profit.

9. Indeed, people across the globe use metaphors of the body, body functions, and body parts to justify, reconcile, and/or critique the production of petroleum, the national and transnational inequalities that it creates, and the violence that it perpetrates on local communities. Whether local people understand petroleum to be the "life blood" (U'wa 1999) or the "elan vital" (Watts n.d.) pulsating through the "arteries" of the "body politic" (Coronil and Skurski 1991), whether they see oil as the "devil's excrement" (Coronil 1997; Watts 1994) or "black bile" (OPIP 1990) defiling the nation, or whether they analogize petroleum drilling and exploitation to "violent sexual penetration" (Sawyer forthcoming), oil operations are commonly associated with the body and bodily functions by many. As such, body metaphors that challenge notions of sovereignty might be particularly apt tools for exploring how forms of exploitation and accumulation, as well as, retribution and accountability are given meaning in reference to the oil industry.

10. Thinking of prostheses in these ways is not unprecedented—see the Oxford English Dictionary and the Encyclopedia Britannica. For a critical review of the use of the prosthetic metaphor see Jain 1999.

In 1929, Freud wrote: "With every tool [man] is perfecting his own organs, whether motor or sensory, or is removing the limits of their functioning. Motor power places gigantic forces at his disposal, which, like his muscles, he can employ in any direction; thanks to ship and aircraft neither water nor air can hinder his movements; by means of spectacles he corrects defects in the lens of his eyes; by means of the telescope he sees into the far distance . . .

Man has, as it were, become a kind of *prosthetic* God" (1929:90–92, quoted in Grosz 1994:39; emphasis added).

In 1977, Carl Sagan wrote: "Perhaps some day it will be possible to add a variety of cognitive and intellectual *prosthetic* devices to the brain, a kind of eyeglasses to the mind" (1977:205, quoted in the Oxford English Dictionary; emphasis added).

11. And, indeed, this is an understanding that the U.S.-based lawyers have encouraged; the delegations that the lawyers periodically arrange to fly to New York (and thus the Ecuadorian representatives for the lawsuit who are captured on film during press conferences) are predominantly indigenous.

12. "Equitable relief" means that Texaco ensure health care for those affected, compensate for personal injuries and losses endured as a result of contamination, clean up the environment it devastated, and modernize drilling and extraction technologies. "Report to Clients on Status of the Litigation in *Aguinda et al. v Texaco Inc.* and *Ashanga et al. v Texaco Inc*" by Cristóbal Bonifaz and team, Amherst-Boston, Massachusetts. March 1995:4.

13. Indigenous organization in Ecuador is structured into three tiers: national, regional, and local. CONAIE (Confederación de Nacionalidades Indígenas del Ecuador) is the national umbrella organization founded in 1986. Its leadership is made up of representatives from the coastal, Andean, and Amazonian regions of Ecuador. CONAIE is the primary indigenous body which negotiates Indian demands with the state. Though recognized by the state, CONAIE is not a government institution. Its actions have been largely in opposition to state agendas, and it has only won recognition by the popular force of its mobilizations (Sawyer 1997a, 1997b; Selverston 1994; Zamoc 1994). CONFENIAE, the Amazonian regional confederation, was founded in 1980. It represents six indigenous nationalities in the region—Quichua, Shuar, Achuar, Siona, Secoya, and Cofán. Since the time of its foundation in 1990, the Huaorani federation has had a tenuous relation with the CONFENIAE leadership.

14. Doña Luz is similarly featured in Christopher Walker and Tony Avirgan's fabulous film "Trinkets and Beads." New York, NY: First Run/ Icarus Films, 1996.

15. Article by Diana Jean Schemo, "Ecuadoreans Want Texaco to Clear Toxic Residue," *New York Times*, February 1, 1998.

16. See Rainforest Action Network Action Alert No. 86 and document "Make an Example of Texaco: 'Star' Polluter of the Ecuadorian Rainforest"; Norwegian "Framtidem I Vare Hender" document "Boikott Texaco"; Acción Ecológica document Alerta Verde No. 6 (June 1993); Punto de Vista No. 577 (June 15, 1993); Tierra Amiga document "Papel higiénico para las petroleras."

17. For documentation of human rights abuses in Ecuador see the *U.S. State Department Country Report on Human Rights for Ecuador* (1991 to present)

and the Florida International University Report, *The Administration of Justice in Ecuador* (1993).

18. Affidavit by Lalit P. Naithani, Senior Advocate before the Supreme Court of India and the State High Court of Allahabad, India. Allahabad, India, February 23, 1994. In his statement Mr. Naithani attested that on "December 2, 1984, 42 tons of poisonous gas escaped from a Union Carbide chemical plant in Bhopal, India, causing the worst industrial disaster in history. The poison gas killed an estimated 2,500 people in the first week and injured as many as 500,000 more .... [U.S. courts] seriously erred in their conclusion that the Indian judicial system would serve as an adequate alternative forum for the Indian victims. Today, more than nine years after the Union Carbide disaster in Bhopal, the vast majority of victims have yet to be compensated for the deaths, injuries, and suffering caused by the poison gas leak."

19. Such was the fate of a near co-terminus suit. Instructively, the November 1993 case (*Aguinda et al. v Texaco, Inc.*) was not the first class action by Ecuadorian citizens against Texaco. Two months earlier, an analogous suit (*Sequihua et al. v Texaco, Inc.*) was presented to a Texas state court. On January 27, 1994, the Texas court dismissed the case on grounds of *forum non conveniens:* that a U.S. court was an inappropriate forum for hearing and ruling on complaints. Texaco's lawyers motioned that the *Aguinda et al.* case similarly be dismissed, claiming that both lawsuits alleged similar personal injuries, property damage, and environmental contamination. Yet while *apparently* similar, in fact, the cases were quite distinct. The *Sequihua et al.* case challenged activities that took place entirely within Ecuador; the *Aguinda et al.* case challenged activities that occurred in corporate home offices, regardless of where their effects were felt. See judgement of Judge Vincent L. Broderick, of the Southern District of New York Court (White Plains, NY, April 11, 1994) and affidavit of Cristóbal Bonifaz (Hampshire, MA, March 8, 1994).

20. The class action charged that "the damage to the plaintiffs is a consequence of the following:

a. Texaco's failure to pump unprocessable crude oil and toxic residue back into wells as is the reasonable prudent industrial practice.
b. Texaco's discarding of toxic substances by dumping them into oil pits, streams, rivers, and wetlands.
c. Texaco's burning of crude oil without any temperature or pollution control.
d. Texaco's spreading of oil on the roads.
e. Texaco's design and construction of oil pipelines without adequate safety features resulting in spills of millions of gallons of crude oil.
f. Texaco's intentional decision for its own economic gain to dump unprocessed oil into the environment, thereby exposing plaintiffs and

the class to toxic crude oil, benzene, arsenic, lead, mercury, and hydrocarbons, knowing that such substances are toxic to humans.

g. Texaco's practice of disposing untreated crude oil and waste products has contaminated the rivers, streams, ground water, and air with dangerous levels of known toxins.

h. Many times more oil has been spilled in the Oriente than was spilled by the Exxon Valdez disaster in Alaska.

i. Plaintiffs and the class have suffered severe personal injury and are at an increased risk of cancer.

j. Water used by plaintiffs is contaminated with Polycyclid Aromatic Hydrocarbons.

All the charges described in A to F are related to corporate decisions made in Texaco's headquarters in New York or in other parts of the United States. None of these decisions were made in Ecuador. All the expert witnesses who will testify on behalf of plaintiffs live in the United States or Canada. All experts who will testify on behalf of plaintiffs and defendants as to customary oil industry practices live in the United States or Canada" (Affidavit by chief lawyer for plaintiffs, Cristóbal Bonifaz. March 8, 1994. pp. 9–10).

21. Affidavit of George S. Branch, counsel of Texaco Inc. and partner in law firm King & Spaldings. New York, December 27, 1993.

22. My grandfather built his career as a civil engineer working for Standard Oil's South American subsidiaries. In 1921, he began working for the Standard Oil Company of Bolivia. Seven years later, he worked for Standard Oil Argentina and by the early 1930's he worked for Standard Oil Venezuela until his death in 1948. Between 1950 and 1986, my father worked as a petroleum geologist for Esso Libya, Esso Peru, Esso Panama, Esso Surinam, Exxon Argentina, Exxon Colombia, Exxon Egypt; these were all international subsidiaries of Standard Oil of New Jersey.

23. In Ecuador, as in most non-Euroamerican oil-producing countries, oil operations are largely carried out by foreign multinationals because of the immense capital investment entailed. Oil companies bid for the exclusive right to explore in and exploit oil from a state-defined petroleum block or concession. Concessionary rights, however, are leased for a limited time period, usually from 25 to 30 years. Once a contract ends, the concession and all infrastructure within it revert to the state. At that point, either the state oil company (Petroecuador, formerly CEPE) decides to operate the concession, or the government will auction off the oil concession once more. In the case of Texaco, the state oil company assumed control of Texaco's oil fields. Petroecuador was technically capable of running Texaco's facilities and for the time being the state oil company maintained the flow of crude upon

which Ecuador was so dependent. Yet, the state oil company had inherited a raw deal; over time, operations would become increasingly difficult. The state oil-company lacked the capital necessary to upgrade deteriorating equipment and replace obsolete technologies.

24. Assertion made by Texaco's Vice President of Exploration and Production in Latin America and West Africa as reported by Cristóbal Bonifaz, the plaintiffs' counsel, in his affidavit. Hampshire, MA, March 8, 1994. Furthermore, an affidavit in support of Texaco contended, "under the law of Ecuador, a corporation that has been canceled ceases to exist and cannot be sued" (Enrique Ponce y Carbo as quoted in the plaintiffs' affidavit by Cristóbal Bonifaz. Hampshire, MA, March 8, 1994).

25. See December 1993 through March 1994 issues of *Hoy*, *El Comercio*, and *Universo* for the vociferous debates around the Texaco case. In this article, I solely cite *Hoy*, as this was the newspaper I could obtain most reliably on a daily basis in both the Amazon and Quito.

26. Though private correspondence, the ambassador's letter became public when Texaco Inc. presented it to the New York judge as supporting evidence for having the case dismissed and reverted to Ecuadorian courts. Peasant, indigenous, and environmental groups in Ecuador (especially the Frente de Defensa de la Amazonía, CONAIE, and Acción Ecológica) obtained the letter via the plaintiffs' chief counsel Cristóbal Bonifaz and disseminated it widely throughout Ecuador. Both Terán Terán's letter and the amicus brief were published in Ecuadorian newspapers.

27. The ambassador's letter read: "Persons *claiming* to be citizens of Ecuador have presented demands before the Southern District court in the State of New York against Texaco, Inc. . . . Of additional concern is the fact that this claim, if judged in US courts, could have collateral effects on the economy of Ecuador. . . . The inappropriate exercise of jurisdiction in this case would become a serious disincentive to U.S. companies that have invested in Ecuador. This disincentive would take place precisely at the moment when Ecuador attempts to attract investors from the United States by extending all possible guarantees to those who invest in Ecuador" (Washington, DC, December 3, 1993).

28. *Brief Amicus Curiae of the Republic of Ecuador*, filed in the U.S. District Court Southern District of New York on January 26, 1994.

29. Affidavit of ambassador Terán Terán, Washington, DC, April 8, 1994.

30. As intimated in the Ambassador's letter and the Republic's amicus brief, the class-action suit against Texaco coincided with attempts to implement drastic neoliberal changes in Ecuador. As oil revenues accounted for 50 percent of the state's budget, the petroleum sector was a prime focus for implementing structural adjustments. To double oil output during his administration, President Sixto Durán Ballén pursued two principal actions. First,

he withdrew Ecuador from OPEC in November 1992 in order to produce in excess of the cartel's quotas. Second, in November 1993 he ushered amendments to the Hydrocarbon Law through the National Congress which granted oil companies greater autonomy and profit sharing (Sawyer 1997a). These sweeping executive and legislative changes—what one former president referred to as "succulent incentives" (*Energia* Nov/Dec 1993:21)—aimed to lure further foreign investment to Ecuador with more attractive fiscal provisions. More enticing contractual arrangements prepared the ground for Ecuador's Seventh Round of oil-concession leasing, launched in January 1994. Throughout spring 1994, multinational corporations bid for rights to explore and produce petroleum for the next quarter century in ten new Amazonian oil blocks of 200,000 hectares each. Once leased, petro-capital would carve up concessions with seismic grids and exploratory wells, placing the thousands of the mestizo peasants and indigenous peoples who inhabited rainforest landscapes in potential danger.

31. Ecuadorian ambassador to the United States of America, Edgar Terán Terán, in his letter to the United States State Department, December 3, 1993.

32. Alejandro Ponce Martínez, "The Lawyer in Ecuador." Lecture given for seminar entitled *The Professional of the 21st Century* Quito, October 18, 1993.

33. Affidavit of Ernesto López Freire, then-Minister of the Tribunal of Constitutional Guarantees. Quito, March 3, 1994.

34. For a more detailed analysis of Ecuador's tort system see CESR 1994.

35. Joint affidavit of Dr. Julio César Trujillo Vasquez, Ex-President of the Tribunal of Constitutional Guarantees and Dr. Ramiro Larrea Santos, Ex-President of the Supreme Court of Ecuador. Quito, March 4, 1994.

36. Affidavit of Elias Piaguaje, an indigenous Secoya leader. March 8, 1994.

37. Affidavit of Elias Piaguaje, an indigenous Secoya leader. March 8, 1994. Similar threats by the military, police, and/or government officials have repeatedly been made throughout the Oriente. Often they result in unwarranted arrests, as has been the case in Pastaza Province especially in communities that protested against seismic work in 1997–1998.

38. Affidavit of Sr. Guillermo Fray. March 7, 1994.

39. Ernesto López Freire, then Minister of the Tribunal of Constitutional Guarantees, Quito, March 3, 1994.

40. Affidavit by Manuel E. Navarro, former Minister of Energy and Mines during Ecuador's military regime. Quito, March 3, 1994. Ernesto López Freire (former Minister of the Tribunal of Constitutional Guarantees) also noted: "Given that Amazonian Indians [as well as peasants, I add] are among the most marginalized peoples in the country," he concluded, "it is impossible *[no existen posibilidades reales]* for them to obtain a just and impartial trial

against Texaco here [in Ecuador]" (Quito, March 3, 1994).

41. Ruling by Judge Vincent L. Broderick, U.S.D.J. of the United States District Court Southern District of New York. White Plains, NY, April 11, 1994.

42. Violation to the Alien Tort Act was likewise cited by the plaintiffs' lawyers in the class action as one of the "counts" (or illegalities) that Texaco had engaged in. Without elaborating an argument, the suit claims that Texaco "violated the laws of nations" in strewing toxic wastes across the Ecuadorian Amazon.

43. Historically, the Alien Tort Act has been used against government actors. Its terms are applicable, Judge Broderick noted, to private entities as well. See "Memorandum," Vincent L. Broderick, USDJ, April 11, 1994.

44. See "Memorandum," Vincent L. Broderick, USDJ, April 11, 1994. Though the Rio Declaration obviously occurred after Texaco's alleged wrong doings, Judge Broderick argued that it "may be declaratory of what it treated as pre-existing principles just as was the Declaration of Independence."

45. "Report to Clients on Status of the Litigation in *Aguinda, et al. v Texaco, Inc.*, and *Ashanga et al. v Texaco, Inc.*" Law Offices of Cristóbal Bonifaz, Amherst/ Boston, MA, March 1995:11.

46. Ruling of Judge Jed Rakoff U.S.D.J. of the United States District Court Southern District of New York. White Plains, NY, November 13, 1996.

47. Three months prior to the Judge Rakoff's 1996 decision, the conservative President Durán Ballén stepped down as a near lame-duck, only to be replaced by *El Loco*, Abdala Bucaram. Despite having run on a populist platform, Bucaram and his administration followed the same neoliberal agenda as his predecessor. In early 1997 Ecuador convulsed through turbulent political times. In February 1997 Bucaram fled the country upon charges of embezzlement. The interim Fabian Alarcon government again surprised many. Not only did the Ecuadorian state after yet more public protest support the Texaco suit and under yet another regime, but it asked to be co-plaintiff. This request has since been retracted and Alarcon has been charged with corruption.

48. Ruling of Judges Newman, Leval, and Wexler of United States Court of Appeals for the Second District (Docket Nos. 97–9102(L), –9104(CON), –9108(CON)), October 5, 1998.

49. While the Alien Tort Act has been applied to a handful of cases alleging violation of the Universal Declaration of Human Rights, such has never been the case with regard to environmental concerns. See "Memorandum," Vincent L. Broderick, USDJ, April 11, 1994.

50. Shapiro argues that "rights discourse" ultimately reinforces the legitimacy of "the state system of sovereignty" (1994:498) against which many marginalized groups struggle. An "ethics of post-sovereignty" must replace "selecting partisanship" with "frames of encountering."

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